

VISION 2010

ENVIRONMENTAL ENFORCEMENT

Governor's Vision

When Governor Schwarzenegger assumed office in November 2003, he directed the Secretary of Cal/EPA to implement the Governor's Environmental Action Plan for the Environment. Action Item # 6 in the Action Plan identifies as an important goal the need to "protect California's environment through the tough enforcement of existing laws." Specifically, the Action Plan states, in pertinent part, that:

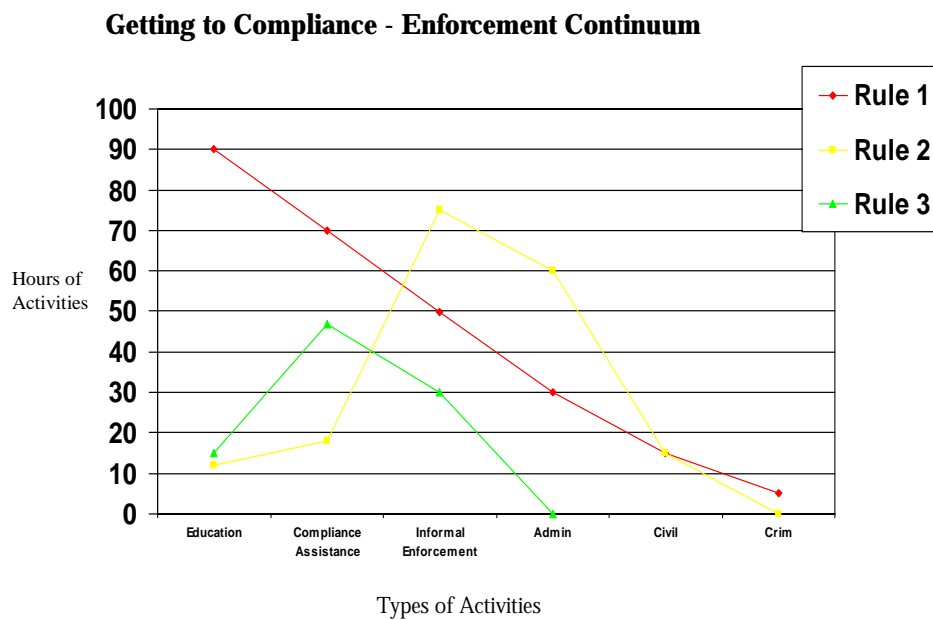
"Strict law enforcement is vital to assure environmental protection, prevent polluters from achieving unfair competitive advantage against complying competitors, send a message of public values, and establish conditions conducive to creativity and participation in voluntary initiatives. My Administration will focus on keeping underlying statutes and regulations simple; simple rules are easiest to follow and comply with; unnecessarily complex rules are hard to comply with, hard to enforce, and encourage evasion. Particular attention will be given to better use of information technologies with strict, clear and rapid penalties for intentional or negligent misstatements or omissions."

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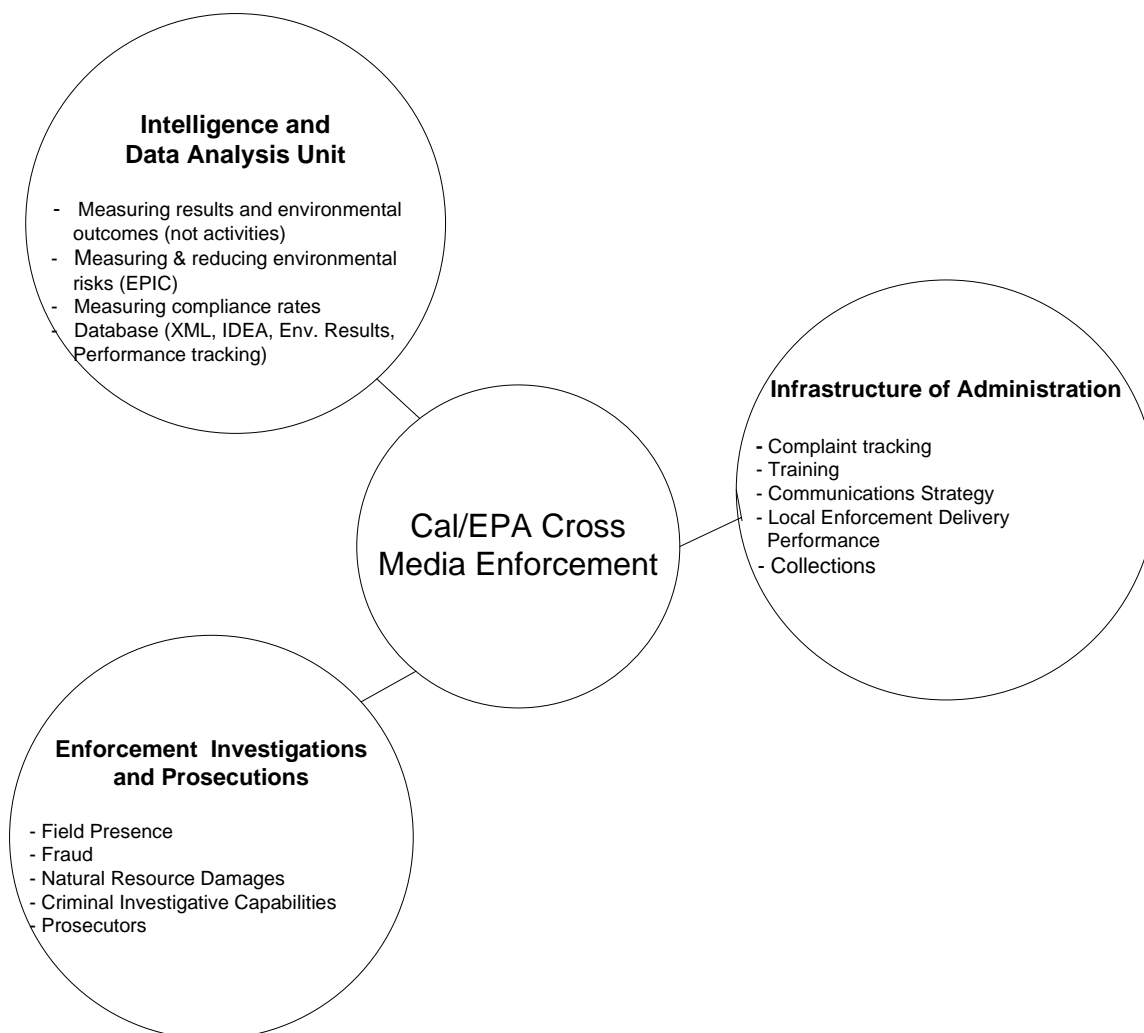
ENVIRONMENTAL ENFORCEMENT

Cal/EPA Vision 2010

Cal/EPA desires to get to a place where each BDO has sufficient information about compliance rates and relative environmental risks and possesses all the necessary tools so as to be able to efficiently allocate its resources among the types of enforcement activities to maximize compliance.



A full complement of tools are needed to create a comprehensive and adaptable enforcement net able to maximize compliance rates. Broadly categorized into three main functions, they are: (1) Intelligence and Information Management, (2) Investigations and Prosecutions, and (3) Infrastructure and Administration. These functions are represented in the bubble diagram below.



Currently, Cal/EPA has only spotty capability within each bubble and lacks all the tools needed to complete an effective and comprehensive enforcement net. In order to achieve Vision 2010, we will be seeking to add capabilities that do not currently exist and to enhance existing capabilities that need to be more robust in order to perform the enforcement function fully.

Cal/EPA Focus and Plan to Implement Vision

After a year long assessment, Cal/EPA has found that—while beneficial—existing compliance achievement strategies have not deterred environmental violations and crimes. The assessment concluded additional steps are required to:

- Increase compliance rates with environmental laws and regulations;
- Target enforcement resources to the areas of highest environmental risk and highest non-compliance, including chronic violators and those entities outside of the current regulatory net;

- Improve consistency in statewide enforcement response;
- Ensure clear and enforceable rules that are fairly enforced; and
- Measure enforcement and environmental results.

The assessment identified five areas where changes are likely to generate improved enforcement performance as measured by an increase in compliance rates and an improvement of environmental quality and reduction in environment risks. They are:

- 1- Improve information management
- 2- Organize enforcement personnel to achieve goals of enforcement
- 3- Develop internal and external communication strategy
- 4- Increase field presence
- 5- Increase prosecutorial outlets

1 - Improving Information Management

Just as it was called out in the Governor's Action Plan, the first area identified in Cal/EPA's assessment was the need to improve our management of information about the environment and compliance with our laws. The assessment found that while there is a need for improved technologies to streamline the management of information, there is an even greater need for good, non-technology-based, and old fashioned analysis of existing information produced and maintained in a myriad of formats by a myriad of state, regional, local public and private entities.

In the assessment surveys, there was an overwhelming consensus that the focus of an enforcement program should be: in the first instance, to achieve compliance with our laws and in the second instance, to maintain and improve environmental quality and to reduce environmental risks. Yet, the assessment found that currently, the enforcement staff and managers in Cal/EPA's myriad of BDOs and local government enforcement agencies regularly and systematically keep track of information about their activities – their numbers of inspections, enforcement actions and penalty dollars, but do not keep regular and systematic track of information about the results of these activities.

While there have been sporadic efforts to measure compliance rates or environmental results, the measurement of this information is not regular or systematic and is not produced in a useful way to better direct existing enforcement resources to their highest and best use for improved environmental quality. For this reason, Cal/EPA is looking at a combination of administrative changes, statutory changes and budgetary changes that will direct Cal/EPA resources to improve its ability to manage information and make it more useful toward achieving real, on-the-ground, improvements in environmental quality.

2 – Organize Enforcement Personnel to Achieve the Goals of Enforcement: Compliance

California has a long history of rigorous, cutting edge environmental laws. Cal/EPA, its constituent boards, departments and offices (BDOs) and its local enforcement agency partners have the responsibility to implement and enforce these laws. Each year new statutes are added that increases the complexity for compliance by stakeholders, for rulemaking and permitting, and for enforcement. Cal/EPA continually struggles to keep up with new patchwork legislative mandates. Every new law requires additional training and new techniques and tools to augment existing enforcement capabilities. Often, Cal/EPA's enforcement staff are diverted from the important tasks of enforcing existing laws to the regulatory tasks of drafting new regulations, new permits and new permit conditions. The statute's required inspection intervals dictate the time allocated by the remaining enforcement staff.

The staff are often allocated to a specific regulatory program and to meet statutory requirements – from drafting regulations, to issuing permits, and finally to enforcing the regulatory and permit requirements. As such, their universe of potential violators is the smaller subset that has obtained a permit and is in the system, so to speak. In many programs, little to no effort is made to conduct enforcement operations to ferret out non-compliance outside the permit inspection routines. The effect on the environment and the regulated community is that the good actors retool their operations, obtain new permits and raise costs to meet the ever stricter requirements, while the bad actors avoid the costs of compliance, continue to skate and harm the environment by their non-compliance with past laws.

The Governor's enforcement initiative is considering a combination of administrative, legislative and budgetary proposals that would: realign existing regulatory staff and create clear divisions for enforcement staff; would shift internal process for enforcement from a legislative task to an executive task; redirect staff to determining compliance and measuring compliance rates; and realign and add enforcement staff to focus on the potential violations outside our permitting inspection routines. The complex array of exclusive funds sources and independent authorities of the implementing organizations frustrates consistent, effective, efficient, and predictable regulatory effort and outcomes.

3 – Develop Communication Strategy

Cal/EPA has the duty to enforce federal and state environmental laws. Enforcement of the law is a task that is never perfected in America– as we live in a society that has deeply held preferences for individual liberty, for a limited government, and the notion that government must deem a person innocent until proven guilty. Like all government agencies and as in most every public or private organization, there are always more goals than can be achieved with existing resources. The challenge is to improve performance with the resources at hand. To that end, a strong communication component and strategy will greatly enhance the deterrent effect of our enforcement activities.

The enforcement initiative is considering proposals to incorporate the existing public information officers and external affairs operations in the enforcement function and to proactively and regularly communicate what is compliance externally. We are also considering proposals to better communicate the same internally throughout the decentralized state, regional and local government matrix of enforcement agencies.

4. – Increase Field Presence

Over time, as new statutory requirements are added and regulations and permits have become complex, more and more Cal/EPA personnel have been moved to a desk to process paperwork and away from the field. Moreover, California's unique regulatory structure involves a highly devolved framework in which local and regional governments carry out the majority of front-line regulatory work under the oversight and supervision of the state regulatory organizations. Personnel classifications and rigid promotional categories have added to the problem of removing people from the field. Internally, there has been a leadership and management focus on the newest statute or regulatory program, and enforcement of older, existing laws falls lower on the priority list. These trends have reduced Cal/EPA's overall field presence. As part of this enforcement initiative, we are looking at proposals to reverse this trend, to raise the importance of enforcing existing laws, to repeal statutory constraints that keep staff at their desks, to collaborate more closely with each other in the field offices and with our local enforcement agency partners, and to move more existing resources into the field. In addition to increasing overall field presence, we will be looking at redirecting enforcement staff to finding non-compliance in areas of highest environmental risks, to finding non-compliance that falls outside our permit and inspection routines, and to measuring compliance rates so as to employ enforcement resources on the areas of highest non-compliance.

5 – Increase and Harmonize Prosecutorial Outlets

California's environmental laws are enforced by a wide variety of state, regional and local agencies under a myriad of media-specific laws. Each law has its own statutory tools in the enforcement toolbox. Even agencies enforcing the same tool from the same toolbox pursue enforcement actions, administrative fines, civil penalties and prosecution in court in widely disparate ways. While some of the difference is a healthy result of local and regional preferences, some is due to an unevenness in access to prosecutorial resources, such as in the case of our local enforcement agency partners. More of the difference is related to institutional boundaries and management preferences. Too often, the disposition of any settlement, fine, or penalty money determines the "preferred" prosecutorial approach. A large array of dedicated special fund provisions strongly influence who takes what action, if any. The result is that expectations as to what is considered "compliance" and the consequences of non compliance differ greatly across the State, leading to charges, perceived and real, of an arbitrary and unfair government.

To address this, the enforcement initiative seeks proposals to harmonize the statutory tools across the different media-specific environmental laws and to provide access to the full range of administrative, civil and criminal prosecutorial resources.

NEAR TERM ACTIONS TO ACHIEVE 2010 VISION

GOAL	Administrative	Statutory	Budgetary
Improve Information Management	<ul style="list-style-type: none"> • Standardize data base fields • Data dictionary • FSR # • EIEN • Single complaint tracking • Leverage GIS resources 	<ul style="list-style-type: none"> • <i>Enable Cal/EPA to set performance criteria for local enforcement agencies</i> • <i>Require measurement of compliance rates and posting on Internet</i> 	<ul style="list-style-type: none"> • Fund EPIC • Add integrated database staff
Organize Enforcement Personnel To Achieve Goals of Enforcement	<ul style="list-style-type: none"> • Intelligence/data mining teams • Create specialize enforcement units • Separate enforcement counsel • 15 course curriculum • <i>Professional development</i> 	<ul style="list-style-type: none"> • <i>Shift enforcement functions from legislative (board) to executive</i> 	<ul style="list-style-type: none"> • <i>Realign existing or add cross media intelligence and investigatory staff</i> • <i>Add forensics, fraud unit</i>
Develop Communication Strategy	<ul style="list-style-type: none"> • Regional training centers • PIO communication strategy to maximize deterrent effect • Monthly enforcement brown bags 		<ul style="list-style-type: none"> • Additional training staff
Increase Field Presence	<ul style="list-style-type: none"> • Cross-media training to local enforcement • Leverage existing BDO investigative resources in regions • Streamline permits- shift staff to enforcement • <i>Loan staff to local govt</i> • <i>Consolidate field offices</i> • <i>Combine existing BDO staff and create multimedia enforcement teams in regional offices</i> 	<ul style="list-style-type: none"> • <i>Expand jurisdiction of DTSC peace officers</i> 	<ul style="list-style-type: none"> • <i>Collaborate with DFG wardens – Adopt-A-Warden</i> • <i>Realign, relocate or add investigators to regions</i>
Increase Prosecutorial Outlets	<ul style="list-style-type: none"> • Designate criminal enforcement attorneys • DA Roundtables • DA Referral protocols • Support Circuit Prosecutors Program • <i>Provide legal services to CUPAs and local enforcement agencies</i> 	<ul style="list-style-type: none"> • <i>Harmonize civil and criminal tools across BDO media</i> • <i>Expand jurisdiction of DFG wardens</i> 	<ul style="list-style-type: none"> • <i>Add enforcement attorneys to regions</i>

KEY Regular text – In progress
Italicized text - Concepts for Consideration